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No. 82-1723

ALFONSO L. STEVAS,
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In The
Supreme Court of the United States
October Term, 1983

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PYRAMID LAKE PAIUTE TRIBE OF INDIANS,
Petitioner,
vs.

TRUCKEE-CARSON IRRIGATION DISTRICT,
STATE OF NEVADA, UNITED STATES
OF AMERICA, et al.,
Respondents.

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**SUPPLEMENTAL MEMORANDUM FOR THE
PYRAMID LAKE PAIUTE TRIBE
OF INDIANS**

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Pursuant to Rule 22.6 of the Rules of the Court, the Pyramid Lake Paiute Tribe of Indians files this Supplemental Memorandum to inform the Court of the decision by the United States District Court for the District of Nevada in *Truckee-Carson Irrigation District (TCID) v. Secretary of the Interior*, No. R-74-34 BRT (Aug. 17, 1983). That suit was brought by TCID, the principal respondent in the instant case, to prevent the Secretary from cancelling the 1926 Contract between TCID and the United States pursuant to which TCID operates the Newlands Reclamation Project. As discussed at page 9 of the Tribe's Petition, in 1973 the Secretary informed TCID of his intent to cancel the 1926 Contract because TCID refused to adhere to the criteria adopted by the Secretary to govern the operations of the Newlands Project.

In its August 17, 1983 Opinion,¹ the district court upheld the Secretary's decision to terminate the Contract, concluding (1) that the Secretary had reserved the authority in Articles 7 and 34 of the 1926 Contract to promulgate rules and regulations for operation of the Project (slip op. 16-18, 20), (2) that the operating criteria were otherwise validly established (*id.* at 9-14), and (3) that TCID had openly defied the operating criteria, permitting cancellation of the 1926 Contract (*id.* at 3-4, 19-22). The Court also held that the operating criteria are fully consistent with the decree in *United States v. Orr Water Ditch Co.*, Equity No. A-3 (D. Nev. Sept. 8, 1944) because that decree simply imposed a maximum limitation on the amount of water diverted by the United States and provided for the use of water "under such control, disposal

¹We have lodged twelve copies of the district court's opinion with the Clerk of the Court.

and regulation as the [United States] may make or desire." (slip op. 13)²

The holding that the Secretary's operating criteria are valid reinforces the Tribe's contention that it has an interest in the present case because the criteria were adopted to conserve Truckee River water for Pyramid Lake. See 43 C.F.R. § 418.1(b). The decision also confirms that the *Orr Ditch* decree did not establish an entitlement in individual landowners to receive Truckee River water to furnish 3.5 and 4.5 acre feet per acre (afa) to Project lands. See note 2, *supra*. In both respects, the district court decision strengthens the case in favor of the Tribe's intervention.

The district court decision also increases the importance of reviewing the merits of the instant case. The Ninth Circuit's holding in this case that project water users are entitled to 3.5 or 4.5 afa notwithstanding the 3 afa contract limitation may affect future operating criteria, the Secretary's operation of the project, and ultimately the amount of the Truckee River water that flows into Pyramid Lake. Now that the district court has upheld the Secretary's authority to issue the criteria and his decision to terminate the 1926 contract, the issue of whether the contractual limitations are valid and binding greatly increases the practical significance of this case.

²The district court's decision therefore confirms that, contrary to TCID's assertion in the instant case (TCID Br. in Opp. 8-9, 11), the decree in *Orr Ditch* did not establish an absolute right of individual Newlands Project water users to receive 3.5 and 4.5 acre feet per acre (afa) for their lands. Those were simply the maximum limitations on the United States' diversion; the scope of the water rights of individual Project water users is defined by their water right contracts with the Secretary, the majority of which limit deliveries to 3.0 afa.

Accordingly, the Tribe is vitally interested in limiting the Project water duties to the 3.0 afa contained in the water users' contracts. That issue warrants this Court's review.

Respectfully submitted,

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